

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

PHILIP ANGELL, STEVEN BROWN,  
TONNIE BECK, TAMMY MORRIS, AND  
DAWN BURNHAM, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

GEICO ADVANTAGE INSURANCE  
COMPANY, GEICO INDEMNITY  
COMPANY, GOVERNMENT  
EMPLOYEES INSURANCE COMPANY,  
GEICO COUNTY MUTUAL INSURANCE  
COMPANY, and GEICO CHOICE  
INSURANCE COMPANY,

Defendants.

Case No. 4:20-cv-00799

**JOINT MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT  
AND WITHDRAW DEFENDANTS' MOTION TO COMPEL OR IN THE  
ALTERNATIVE DISMISS PLAINTIFFS' COMPLAINT**

Defendants GEICO Advantage Insurance Company, GEICO Indemnity Company, Government Employees Insurance Company, GEICO County Mutual Insurance Company, and GEICO Choice Insurance Company ("Defendants") and Plaintiffs Phillip Angell, Steven Brown, Tonnies Beck, Tammy Morris and Dawn Burnham ("Plaintiffs") (collectively, the "Parties") respectfully move this Court to grant Plaintiffs leave to file a Second Amended Complaint and to allow Defendants to withdraw and/or have the Court deem moot their Motion to Compel Appraisal or in the Alternative Dismiss Plaintiffs' original complaint without prejudice to refiling.

1. On March 5, 2020, Plaintiffs filed their initial Complaint. Dkt. No. 1.

2. On May 26, 2020, Defendants timely filed their responsive pleading to the original complaint moving to compel appraisal and stay or dismiss the action pending appraisal, or in the alternative dismiss the complaint (“Motion”). Dkt. No. 22.

3. On June 16, 2020, Plaintiffs filed a First Amended Complaint and an Opposition to Defendants’ Motion. Dkt Nos. 23, 24.

4. In order to correct a factual error in the First Amended Complaint, the Parties jointly request that Plaintiffs be allowed to file the attached Second Amended Complaint.<sup>1</sup> Second Amended Complaint, Ex. A. The only change in the Second Amended Complaint is the correction of an error relating to the amount of sales tax that Plaintiff Angell was paid in the settlement of one of his total loss claims (claim number 0486329120101015-01). Allowing amendment to make this correction will streamline the issues in dispute conserving party and judicial resources.

5. Given the filing of the First Amended Complaint and the anticipated filing of the Second Amended Complaint, the Parties also jointly request that Defendants be allowed to withdraw their Motion and/or that the Motion be deemed moot by the filing of the amended pleadings, without prejudice to Defendants refiling in response to the operative complaint. Allowing Defendants to withdraw and/or deeming moot the Motion that is currently pending against an inoperative complaint will save judicial and party resources by, among other things, avoiding duplicative briefing with respect to certain issues.

6. If this motion is granted, Defendants request 21 days to respond to the Second Amended Complaint from the date it is filed.

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<sup>1</sup> Defendants jointly move the Court to grant Plaintiffs leave to file a Second Amended Complaint in the interest of conserving party and judicial resources. By jointly moving, Defendants do not concede any allegations in the Second Amended Complaint or the propriety of Plaintiffs’ claims, and reserve all rights.

7. No prejudice will result to either party by the granting of this motion, and neither the filing of the Second Amended Complaint nor the withdrawal and/or mooted of Defendants' Motion will have any impact on the case schedule.

**WHEREFORE**, the Parties respectfully move this Court to grant Plaintiffs leave to file a Second Amended Complaint and to allow Defendants to withdraw and/or for the Court to deem moot their Motion to Compel Appraisal and Dismiss or Stay the Action, or in the Alternative Dismiss Plaintiffs' original complaint without prejudice to refiling.

### **CERTIFICATE OF CONFERENCE**

On June 23, 2020, counsel for GEICO conferred with Plaintiffs' counsel, Jacob Phillips via email regarding the issues raised in this Motion. The parties jointly request the relief requested in this motion.

Respectfully submitted,

**EVERSHEDS SUTHERLAND (US) LLP**

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***Attorneys for Plaintiffs***

**CERTIFICATE OF SERVICE**

I hereby certify that on June 24, 2020, I electronically filed a true and exact copy of the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/ Giselle S. Guerra

Giselle S. Guerra